

MURRAY et al. - Serial No. 09/976,377

Request for Reconsideration After Final Rejection Under 37 CFR 1.116

Attorney Docket No. KFHI-100

REMARKS

Claims 21-40 and 59 are pending. On May 26, 2004, Applicants' representative called Examiner Becker and requested a personal interview. Examiner Becker stated that he would prefer that any remarks be put on paper rather than discussed at an interview since the application is under final rejection. Applicants' representative further requested a follow-up telephone conference after the filing of the Request for Reconsideration to resolve any outstanding issues.

I. FIRST REJECTION UNDER 35 U.S.C. 103(a)

Claims 21-31, 33-38, 40 and 59 were rejected under 35 U.S.C. 103(a) over Zimmermann et al. (U.S. Patent No. 5,205,106) in view of McHale et al. (U.S. Patent No. 5,537,742). This rejection is respectfully traversed. None of the references, taken alone or in combination, teach or suggest a rolled food item with a plurality of width-wise separable food segments on a support strip as claimed.

A. Zimmerman et al. Does Not Disclose Multi-Segmented Food Strips

Zimmerman et al. discloses a rolled food item having a single strip of a fruit snack on a single strip of support. Zimmerman et al. does not teach or suggest segmenting or perforating food strips across the entire width of each food strip to form a multiplicity of multi-segmented food strips, wherein each rolled-up multi-segmented food strip has a plurality of separable food segments on a single support strip.

MURRAY et al. - Serial No. 09/976,377

Request for Reconsideration After Final Rejection Under 37 CFR 1.116

Attorney Docket No. KFHI-100

**B. McHale et al. Does Not Disclose Segmenting or
Perforating Food Strips Across the Entire Width of
Each Food Strip to Form Multi-Segmented Food Strips**

McHale et al. does not overcome the deficiencies of Zimmerman et al. McHale et al. discloses a multi-phase sheeted chewing gum product. The product comprises a flat sheet having a first mass of chewing gum and a second mass of a confectionary product having a different color than the first mass. See FIGS. 1-7. Unlike the fruit snack of Zimmerman et al. which requires a support strip (col. 1, lines 22-28), the chewing gum product of McHale et al. is not supported on a support material or support strip.

The flat sheet is scored so that it can be cut into the desired size and shape for the *final* piece of chewing gum (col. 7, lines 20-25). If the desired final form is a long rolled-up tape, the sheet is scored lengthwise at 0.75 inch intervals and laterally cut at 6 feet. See FIG. 13. If the desired final form is a conventional stick of chewing gum, the sheet is scored lengthwise at 0.75 inch intervals and also scored at 3 inch intervals across its width. Accordingly, the sheet is then broken by a conventional sheeting machine to produce typical 0.75 x 3 x 0.055 inch sticks of chewing gum (col. 7, lines 41-50). McHale et al. does not teach or suggest segmenting or perforating food strips across the entire width of each food strip to form a multiplicity of multi-segmented food strips, wherein each multi-segmented food strip has a plurality of separable food segments on a single support.

The Examiner's citation of FIG. 7 is not to the contrary. FIG. 7 is directed to an embodiment in which a single piece of gum is formed into a disk. Each disk may be scored along lines 55 to "create the look" of pizza slices (i.e., slice scores). The slice scores radiate from a central point on a disk of gum to an outer circumferential edge. The pizza slice scores on a disk of gum do not teach or suggest segmenting or perforating food strips across the entire width of a food strip without cutting through a support strip.

MURRAY et al. - Serial No. 09/976,377

Request for Reconsideration After Final Rejection Under 37 CFR 1.116

Attorney Docket No. KFHI-100

Indeed, the only strips disclosed in McHale et al. are: (1) a conventional 3 inch stick of gum, or (2) a 6 foot rolled up tape of gum. Moreover, score lines 55 simply "create the look" of pizza slices on a single disk of gum. There is no teaching or suggestion that the single piece of gum is then separable into a plurality of gum segments.

The Examiner's citation of FIG. 14 supports Applicants' position. FIG. 14 merely shows a leading edge 136 of a six foot sheet of chewing gum created by lateral cutting roller 123 and breaking brush 134. The six foot sheet is not segmented or perforated across the entire width to form a multiplicity of multi-segmented food strips, each multi-segmented food strip having a plurality of separable food segments.

Neither Zimmerman et al. nor McHale et al. teaches or suggests segmenting or perforating food strips across the entire width of each food strip to form a multiplicity of multi-segmented food strips, wherein each multi-segmented food strip is rolled and has a plurality of separable food segments on a support strip.

C. A Case of Obviousness Has Not Been Established

To establish obviousness, three basic criteria must be met. First, there must be some suggestion or motivation to combine reference teachings. Second, there must be a reasonable expectation of success. Third, the combined references must teach or suggest all of the claim limitations. See MPEP 2142. Applicants respectfully assert that these criteria have not been met.

The mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. See MPEP 2143.01. To the contrary, Zimmerman et al. *teaches away* from the method of McHale et al. Zimmerman et al. states that an object of the invention is to deposit food as strips on a support material "such that longitudinal cutting of the food to

MURRAY et al. - Serial No. 09/976,377
Request for Reconsideration After Final Rejection Under 37 CFR 1.116
Attorney Docket No. KFHI-100

form strips is not required" (col. 1, lines 34-41). In contrast, McHale et al. requires longitudinal scoring and cutting of sheets of gum without a support material. Accordingly, faced with the disclosure of Zimmerman et al., one of ordinary skill in the art would not seek the teachings of McHale et al.

There is also no suggestion in either Zimmerman et al. or McHale et al. for "better portioning" of a rolled strip food product, as asserted by the Examiner. In fact, this suggestion for segmenting a strip into a plurality of separable segments for easy removal by a consumer, such as a young child, comes from Applicants' disclosure, not from the cited references, and therefore is an example of impermissible hindsight reconstruction.

Further, there has been no demonstration of a reasonable expectation of success. Applicants discovered that thin strips of tacky food, such as dehydrated fruit puree, do not lend themselves to forming rolled food items in which the food is segmented. Segments of dried puree flow together during and after processing, thereby eliminating any segments. See paragraphs [0005]-[0007]. Applicants solved this problem by segmenting food strips while they are still in a flowable state. See paragraph [0011]. This may be accomplished by cooling food strips to a temperature of about 60°F to about 110 °F, preferably about 75° F to about 90° F, for segmenting and perforating. See paragraph [0017] and Claims 33-34. The solution of a problem must be considered in any obviousness inquiry. There is no reasonable expectation that the scoring and breaking of gum would be applicable to the rolled fruit-based material of Zimmerman et al.

Finally, the combined references do not teach or suggest all of the claim limitations. Contrary to the assertion by the Examiner, Applicants do not argue as to whether the features of a secondary reference may be "bodily incorporated into the structure" of the primary reference. Rather, Applicants argue that, even if the scoring of gum in McHale et al. is combined with the rolled food item of Zimmerman et al., radial scoring to create the look of "pizza slices" or lateral scoring for a six foot rolled-up tape

MURRAY et al. - Serial No. 09/976,377

Request for Reconsideration After Final Rejection Under 37 CFR 1.116

Attorney Docket No. KFHI-100

of gum or for a three inch conventional stick of gum do not provide any motivation for one of ordinary skill in the art to segment or perforate a food strip across the entire width of the food strip to form a multi-segmented food strip having a plurality of separable food segments on a single support strip. Thus, even if the references were properly combinable, which they are not, the *combined* teachings of both references do not teach or suggest the claimed method of making a multiplicity of rolled food products with width-wise separable segments. It would not have been obvious for one of ordinary skill in the art to practice the claimed methods in view of the combined teachings of Zimmerman et al. and McHale et al. Reconsideration and withdrawal of the rejection are respectfully requested.

II. SECOND REJECTION UNDER 35 U.S.C. 103(a)

Claim 32 was rejected under 35 U.S.C. 103(a) over Zimmermann et al. in view of McHale et al. and WO 97/33822. This rejection is respectfully traversed.

WO '822 does not overcome the deficiencies of Zimmerman et al. and McHale et al. WO '822 discloses a winding assembly for manufacturing individual pieces of rolled product. WO '822 does not teach or suggest segmenting or perforating food strips across the entire width of each food strip to form a multiplicity of multi-segmented food strips, wherein each multi-segmented food strip has a plurality of separable food segments on a support strip. Even if the references were properly combinable, Applicants' claimed invention would not be obtained or rendered obvious. Thus, it would not have been obvious for one of ordinary skill in the art to practice the claimed methods in view of the combined teachings of Zimmerman et al., McHale et al., and WO '822. Reconsideration and withdrawal of the rejection are respectfully requested.

MURRAY et al. - Serial No. 09/976,377

Request for Reconsideration After Final Rejection Under 37 CFR 1.116

Attorney Docket No. KFHI-100

III. THIRD REJECTION UNDER 35 U.S.C. 103(a)

Claim 39 was rejected under 35 U.S.C. 103(a) over Zimmermann et al. in view of McHale et al. and Jens et al. (U.S. Patent No. 6,217,309). This rejection is respectfully traversed.

Jens et al. does not overcome the deficiencies of Zimmerman et al. and McHale et al. Jens et al. discloses a sliced food product having a design or figure cut therein (Abstract). According to Jens et al., cutting die members 20, 22 define a cutting pattern for forming a "pop out" design (e.g., bones, dinosaurs, cartoon characters). The "pop out" design may be easily separated from the surrounding peripheral portion of the slice (col. 2, lines 38-65). Thus, Jens et al. does not teach or suggest cutting entirely across the width of the strips of food.

The cutting die members of Jens et al. may have a substantially flat end surface to avoid cutting film wrap 26, 28. In contrast, the water knives of Zimmerman et al. cut the support material. Thus, Jens et al. *teaches away* from the process of Zimmerman et al. and the cutting die members of Jens et al. could not be substituted for the disclosed water knives. As there is no film wrap or supporting material in McHale et al. and McHale et al.'s lateral cutting roller 123 merely scores a sheet of confectionary product which is later broken by the force exerted by breaking brush 134, there is also no teaching or suggestion to substitute the cutting die members of Jens et al. for the lateral cutting roller of McHale et al.

In sum, there is no teaching or suggestion to use the cutting die members of Jens et al. in the apparatus of Zimmerman et al. and/or McHale et al. to form "pop out" designs. Further, any combination of Jens et al. and/or McHale et al. would not result in segmenting or perforating food strips across the entire width of each food strip to form a multiplicity of multi-segmented food strips, wherein each multi-segmented food strip has a plurality of separable food segments on a support strip. It would not have been obvious

MURRAY et al. - Serial No. 09/976,377

Request for Reconsideration After Final Rejection Under 37 CFR 1.116

Attorney Docket No. KFHI-100

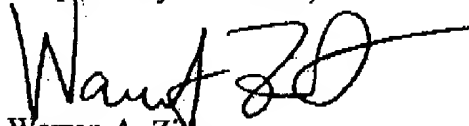
for one of ordinary skill in the art to practice the claimed methods in view of the combined teachings of Zimmerman et al., McHale et al., and Jens et al. Reconsideration and withdrawal of the rejection are respectfully requested.

IV. CONCLUSION

In light of the foregoing remarks, this application is in condition for allowance, and early passage of this case to issue is respectfully requested. If there are any questions regarding this Amendment or the application in general, a telephone call to the undersigned would be appreciated.

Any fees should be charged to, or any overpayment in fees should be credited to, Deposit Account No. 501032 (Docket #KFHI-100).

Respectfully submitted,



Warren A. Zimlau

Reg. No. 39,085

Barry I. Hollander

Reg. No. 28,566

Hollander Law Firm, P.L.C.
Suite 305, 10300 Eaton Place
Fairfax, Virginia 22030
Tel: (703) 383-4800
Fax: (703) 383-4804

June 3, 2004